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In the Supreme Court of the United States

OCTOBER TERM, 1994

THE AMERICAN LIBRARY ASSOCIATION, ET AL.,
PETITIONERS

v.

JANET RENO, ATTORNEY GENERAL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether 18 U.S.C. 2257, which requires producers of material depicting sexually explicit acts to create and maintain records of the names and ages of the persons portrayed as a means of deterring the production and distribution of child pornography, comports with the First Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-33a) is reported at 33 F.3d 78. The opinion of the district court (Pet. App. 34a-47a) is reported at 794 F. Supp. 412.

JURISDICTION

The judgment of the court of appeals was entered on September 20, 1994. The court of appeals denied petitioners' petition for rehearing on February 28, 1995. Pet. App. 58a. The petition for a writ of certiorari was filed on April 7, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In order to combat the production and distribution of child pornography, 18 U.S.C. 2257 (Supp. V 1993) requires all producers of matter containing visual depictions of "actual sexually explicit conduct" made after November 1, 1990, to create and maintain records of the names and dates of birth of the performers portrayed in the depictions. 18 U.S.C. 2257(a) and (b). The statute requires that the records be maintained at the producer's place of business or as elsewhere permitted by regulations, and that the records be made available "to the Attorney General for inspection at all reasonable times." 18 U.S.C. 2257(c). The statute also mandates that producers affix to each copy of material covered by its provisions a statement describing where the records required to be maintained regarding the depicted performers are located. 18 U.S.C. 2257(e)(1).

The statute's record-creation and maintenance requirements apply to those persons or entities most directly involved in the production of the most sexually explicit images. Thus, the statute defines "produces" to mean "produce, manufacture or publish," and includes "duplication, reproduction or reissuing," but does not include "mere distribution or any other activity which does not involve hiring, contracting for managing, or otherwise arranging for the participation of the performers depicted." 18 U.S.C. 2257(h)(3) (Supp. V 1993). In addition, the statute applies only to depictions of "actual sexually explicit conduct," which it defines as four specific types of actual (not simulated) sexual conduct: (1) "sexual intercourse," (2) "bestiality," (3) "masturbation," and (4) "sadistic or masochistic abuse." 18 U.S.C.

2257(h)(1) (Supp. V 1993) (incorporating the definitions contained in 18 U.S.C. 2256(2)(A)-(D)).[1]

The statute generally provides that no information or evidence obtained from the records shall be used "directly or indirectly" as evidence against any person with respect to any violation of law. 18 U.S.C. 2257(d)(1) (Supp. V 1993). The only exceptions are that the records may be relied upon as evidence in a prosecution for a violation of Section 2257 itself "or for a violation of any applicable provision of law with respect to the furnishing of false information." 18 U.S.C. 2257(d)(2) (Supp. V 1993). Violation of Section 2257 subjects a person to fines and imprisonment of up to two years for the first offense, and up to five years (and not less than two) for succeeding convictions. 18 U.S.C. 2257(i) (Supp. V 1993).

Under authority granted by the statute, see 18 U.S.C. 2257(e)(1) and (g) (Supp. V 1993), the Attorney General has promulgated regulations that further define its scope and operation. See 28 C.F.R. Pt. 75. Those regulations provide that only "primary producers"—that is, producers who actually film, videotape or photograph a covered visual depiction—

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[1] In modifying the definition of "producer" and of "actual sexually explicit conduct" in 1990, Congress inadvertently failed to repeal the prior definitions of those terms. See Child Protection Restoration and Penalties Enhancement Act of 1990, Pub. L. No. 101-647, § 311, 104 Stat. 4816 (striking "subsections (d) and (e)" of prior law, but not subsections (f) and (g)). However, Congress's intent to substitute the definitions contained in the 1990 Act is apparent. In any event, the definitions adopted in 1990 are controlling because they are later-enacted, and petitioners have not contended otherwise.

are obliged to examine a performer's original identification documents. Secondary producers, who do not personally create a covered visual depiction, may satisfy their recordkeeping obligations by accepting "copies of the [required] records" from the primary producer. 28 C.F.R. 75.2(b). The regulations also provide that persons whose activities are limited to distribution or photo-processing are not producers within the meaning of the statute. 28 C.F.R. 75.1(c)(4).

2. Petitioners, thirteen entities involved in the production or distribution of books, magazines, films, and photographs, filed suit in the United States District Court for the District of Columbia claiming that Section 2257 violates the First Amendment.[2]

a. The district court found it unnecessary to resolve petitioners' claim that Section 2257 regulates protected speech based on its content and hence is subject to strict scrutiny, because it found substantial provisions of Section 2257 infirm even under the standard of intermediate scrutiny applicable to time, place, and manner restrictions. Pet. App. 41a-43a. The court noted that it was "undisputed by either party that the government has a compelling interest

[2] Many of the same petitioners had sued to enjoin the enforcement of a predecessor statute, the Child Protection and Obscenity Enforcement Act of 1988, Pub. L. No. 100-690, 102 Stat. 4485-4503 (1988). See 18 U.S.C. 2257 (Supp. II 1990). The district court ruled that significant parts of Section 2257 violated the First Amendment. However, the district court's ruling was vacated as moot after Congress, in 1990, in response to the district court's decision, amended Section 2257 by enacting the Child Protection Restoration and Penalties Enhancement Act of 1990, Pub. L. No. 101-647, 104 Stat. 4816-4817. See *American Library Ass'n* v. *Barr*, 956 F.2d 1178, 1182 (D.C. Cir. 1992).

in attempting to eradicate the evils associated with child pornography," *id.* at 40a, and that "the government has every right to regulate—or even ban—[sexually explicit visual] depictions of underaged persons." *Id.* at 43a. Thus, the court concluded, under any level of scrutiny, Section 2257 is "constitutional as applied to images of models under 18 years of age." Pet. App. 47a. Petitioners, however, alleged that they produce or distribute visual images containing depictions of actual sexually explicit conduct of adults. *Id.* at 40a n.4, 47a. And in the court's view, imposition of what it termed the "burdensome" record-keeping requirements of Section 2257 on such producers does not rationally advance the statute's goal of enabling the government to identify and combat child pornography. *Id.* at 43a-47a. The court therefore enjoined enforcement of Section 2257 "as it applies to records that must be kept pertaining to images of adult models." Pet. App. 47a.

b. The court of appeals in large measure reversed. Pet. App. 1a-33a. It held that Section 2257 and its implementing regulations are constitutional as applied to "the vast majority of the materials affected by them." *Id.* at 31a. The court, however, did conclude that "certain provisions and potential applications" of the statute are inconsistent with the First Amendment. *Ibid.*

The court held, first, that Section 2257 and the regulations promulgated thereunder are not content-based interferences with speech, and hence are subject to intermediate rather than strict scrutiny under the First Amendment. Pet. App. 8a-17a. The court acknowledged that "[d]eciding whether a particular regulation is content-based or neutral is not always a simple task," *id.* at 9a (quoting *Turner Broadcast-*

ing Systems, Inc. v. *FCC*, 114 S. Ct. 2445, 2459 (1994)), and that under this Court's precedents, the "controlling consideration" is the government's purpose. Pet. App. 9a-10a (quoting *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989)); see also Pet. App. 10a ("A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." (quoting *Ward*, 491 U.S. at 791)). The court of appeals found it "clear that Congress enacted the Act not to regulate the content of sexually explicit materials, but to protect children by deterring the production and distribution of child pornography." Pet. App. 13a; see also *id.* at 11a (noting difficulty under prior child protection laws of ascertaining real ages of adolescent performers). As the court explained, "section 2257 applies to speech of a particular content not because of any concern over the thoughts it might convey, but because the evil the law was designed to address —the use of underage performers—has its locus in the speech's production." *Id.* at 15a. The court therefore concluded that Section 2257 and the regulations are valid if they satisfy the test of intermediate scrutiny—*i.e.*, if they are "narrowly tailored to serve a significant government interest, and . . . leave open ample alternative channels of communication." *Id.* at 17a (quoting *Ward*, 491 U.S. at 791).

Applying that test, the court of appeals first noted that the "Government has a significant—indeed compelling—interest in the prevention of child pornography." Pet. App. 17a (citing *New York* v. *Ferber*, 458 U.S. 747, 756-757 (1982)). The court further observed that Section 2257 as implemented leaves open "ample avenues for the communication of sex-

ually explicit materials," because "the Act, by its terms, bans no form of expression." Pet. App. 17a. The only remaining issue was therefore whether Section 2257 is narrowly tailored to advance its goals. The court of appeals held that, with the exception of several particular provisions, it is. *Ibid.*

Section 2257 generally furthers the government's substantial interest in deterring the production and distribution of child pornography, the court of appeals explained. It observed that by requiring primary producers to create and maintain records of their performers' ages, and by requiring secondary producers to inspect those records, the statutory and regulatory scheme "advance[s] the abatement of child pornography in fundamental ways": (1) "[i]t ensures that primary producers actually confirm that a prospective performer is of age," (2) "it deters children from attempting to pass as adults," and (3) "most important, it creates the only mechanism by which secondary producers (who by definition have no contact with performers) can be required to verify the ages of the individuals pictured in the materials they will be producing." Pet. App. 18a-19a. The court rejected the claim that, because Section 2257 requires producers to create and maintain records relating not only to child performers but also to adults, it is overbroad. It explained: "the statutory scheme depends upon requiring producers to identify and maintain records of *every* performer who appears in their sexually explicit materials. The entire point of the Act is to prevent subjective determinations of age by implementing a uniform procedure that applies to all performers." *Id.* at 21a. The court acknowledged that certain applications of Section 2257 could exceed constitutional bounds, "an

illustrated sex manual for the elderly being an obvious example," but noted that the instant facial challenge did not present "the concrete facts that would enable [it] to test the limits of the Act." *Id.* at 21a-22a. Such limits, the court reasoned, "are best determined in case-by-case tests." *Id.* at 22a.

The court also rejected respondents' facial challenge to most of the specific requirements of Section 2257 and the regulations. Pet. App. 23a-30a. The court observed, first, that the statute's recordkeeping requirements "can hardly be considered onerous," since they are similar to those "routinely required to facilitate the enforcement of our immigration, labor, and tax laws." *Id.* at 23a.[3] The court also upheld the statute's requirement that producers disclose where the records required to be kept may be found. *Id.* at 27a. The court observed that "[r]equiring the creation of records is of little avail if they cannot be readily located," and it is therefore "entirely appropriate" to require the producer to affix a statement identifying the location of the records disclosing performers' names and ages. *Ibid.*

The court of appeals did, however, set aside a regulation of the Attorney General that the producer maintain the records for as long as the producer remains in business and "for five years thereafter." 28 C.F.R. 75.4. Pending a new regulation "more

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[3] In addition, the court noted, the Attorney General's regulations make clear that "secondary producers" (that is, producers that have no personal contact with the models whose images appear in the covered depictions) may satisfy their recordkeeping obligations by accepting and retaining copies of the required records from the primary producer, or from the immediately preceding secondary producer. Pet. App. 23a-24a.

rationally tailored to actual law enforcement needs," the court stated it would "accept a period of five years as reasonable." Pet. App. 24a-25a. The court also expanded the exemption from the covered class of producers for "photo processors," see 28 C.F.R. 75.1(c)(4)(i), to include "printers, film processors, and video duplicators whose roles are functionally indistinguishable from that of photo processors." Pet. App. 9a. Finally, the court left for another day the application of Section 2257 and the regulations to "appropriationist artists," who "create distinct works that incorporate photographs taken by others —typically, without permission." The court found it unclear whether such artists are primary producers under the regulations, and observed that, while treating them as secondary producers "would raise a serious First Amendment problem," that problem "cannot be resolved on the present record." *Id.* at 28a-29a.[4]

ARGUMENT

There is no need for this Court to review the decision below. This is the first case in which a constitutional challenge of any kind to Section 2257 has been made. Accordingly, the decision of the court of appeals, upholding Section 2257 against petitioners' facial challenge, does not conflict with any other court of appeals' decision. Moreover, as a result of

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[4] District Judge Reynolds (E.D. Wisc.), sitting by designation, dissented, terming the statute "overbroad, chilling, and a questionable deterrent to child pornography." Pet. App. 32a. Judge Reynolds' brief dissent noted that Section 2257 applies to constitutionally protected depictions (not just child pornography) and that it does not further the goal of prosecuting child pornography because the statute precludes use of the records in such a prosecution. *Id.* at 32a-33a.

an injunction entered by the district court during this litigation (which remains in force until issuance of the court of appeals' mandate), Section 2257 has not yet been applied: No person has ever been prosecuted for allegedly failing to create or maintain records of the ages of performers who have engaged in the actual sexually explicit conduct designated by the statute. While theoretical applications of Section 2257 in the future conceivably could raise constitutional concerns, as the court of appeals recognized, any determination of the contexts in which the statute cannot validly be applied is properly reserved for future case-specific challenges. As for the court of appeals' resolution of the facial challenge presented by petitioners, it was based on a straightforward—and correct—application of this Court's First Amendment precedents.

1. Petitioners argue (Pet. 14) that, despite the absence of any circuit conflict, review of the decision below is warranted because, petitioners assert, "[n]o other entity is likely to attempt a similar challenge." Petitioners do not make clear what the basis for that prediction is; on the contrary, other entities that are similarly of the view that the exercise of their First Amendment rights is being chilled by the existence of Section 2257 are at liberty to raise a facial challenge such as the one in this case, and they may do so in any district court in which venue properly lies. But even if no other facial challenge to the statute were likely, its constitutionality can plainly be raised as a defense to any future criminal prosecution for violating its record-keeping and disclosure provisions. Thus, there is no reason to believe that the decision below will "be the last word on the constitutionality of the Act." Pet. 14.

2. Petitioners also assert that review is warranted because the court of appeals misunderstood the First Amendment concept of "content-neutrality" and misapplied the standard of intermediate scrutiny. In fact, the court of appeals did no more than apply familiar principles and precedents of this Court in the context of Section 2257, and there is no reason to believe that the decision will have any effect outside the subject area covered by Section 2257.

a. Petitioners first contend (Pet. 14-19) that the court of appeals erred in not finding Section 2257 to be a content-based regulation of speech subject to strict scrutiny. In reaching that conclusion, however, the court of appeals followed this Court's teaching that legislative purpose is a key consideration in determining whether a given regulation is content-neutral. As this Court has explained, a regulation that serves "purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others," and thus a statute is content-neutral if it is "*justified* without reference to the content of the regulated speech." *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989) (emphasis in original); accord *City of Renton* v. *Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986) (upholding as content-neutral a zoning ordinance that barred "adult" (but not mainstream) movie theatres from locating within 1,000 feet of any residence, church, park or school). In this case, as the court of appeals recognized, Section 2257 serves the purpose of deterring the exploitation of children in the production and distribution of material containing actual sexually explicit conduct, and any disproportionate effect on persons whose films contain depictions of such conduct is merely incidental to that conduct-based objective. See

also *United States* v. *O'Brien*, 391 U.S. 367, 376 (1968) (applying intermediate scrutiny to government regulation of conduct combining " 'speech' and 'nonspeech' elements").

Petitioners claim (Pet. 14-16) that under this Court's decision last Term in *Turner Broadcasting Systems, Inc.* v. *FCC*, 114 S. Ct. 2445 (1994), reliance on congressional purpose is inappropriate in determining whether or not a given law is content-neutral. Petitioners misread *Turner*. *Turner*, in fact, reaffirmed that the "principal inquiry in determining content-neutrality . . . is whether the government has adopted a regulation of speech because of [agreement or] disagreement with the message it conveys." 114 S. Ct. at 2459 (brackets in original). Under that inquiry, as the court of appeals recognized, Section 2257 is plainly valid, for it reflects not disagreement with actual sexually explicit materials, but rather an attempt to identify and deter the illegal conduct of using child participants in such films.

It is true that the Court, in *Turner*, did observe that the "mere assertion of a content-neutral purpose" is insufficient "to save a law which, on its face, discriminates based on content." 114 S. Ct. at 2549. But here, the statute fully permits producers to create and disseminate material containing sexually explicit depictions—and to express any message using those depictions—so long as the producer has complied with the statute's record-keeping and disclosure requirements regarding performers who engage in such acts. See also Pet. App. 14a (while Section 2257 "may impose certain obligations on * * * speakers, [it] place[s] no restrictions on the speech itself"). This case is thus closely akin to *Renton*,

where the Court upheld, as content-neutral, a municipal ordinance imposing restrictions on the location of adult theaters, even though the ordinance defined adult theaters by reference to the content of the films the theaters exhibited. 475 U.S. at 44. The Court reasoned that the ordinance was justified not by any purpose to suppress ideas, but by the need to combat the "undesirable secondary effects"—in the form of crime and adverse impacts on retail trade and property values—associated with such theaters. Hence, the ordinance was to be "reviewed under the standards applicable to 'content-neutral' time, place, and manner regulations." *Id.* at 49, 51; see also *R.A.V.* v. *City of St. Paul*, 112 S. Ct. 2538, 2546 (1992) ("A[] valid basis for according differential treatment to even a content-defined subclass of proscribable speech is that the subclass happens to be associated with particular 'secondary effects' of the speech, so that the regulation is '*justified* without reference to the content of the . . . speech.'") (quoting *Renton*, 475 U.S. at 48); *Young* v. *American Mini Theatres, Inc.*, 427 U.S. 50, 70 (1976) (plurality opinion); *id.* at 82 n.6 (Powell, J., concurring)).

In this case, as the court of appeals recognized, Congress has taken aim at such a secondary effect: the exploitation of children in pornography. Without proper controls on the employment of minors, the production of visual depictions of sexual conduct risks the creation of child pornography, a category of expression that is "unprotected by the First Amendment." *New York* v. *Ferber*, 458 U.S. 747, 764 (1982). Congress was free to seek to reduce the physical and psychological exploitation of minors —a recognized and inherent effect of the production and distribution of child pornography, *id.* at 758-760

—by requiring that producers of sexually explicit visual depictions check the names and addresses of the models they plan to employ. And as the court of appeals noted (Pet. App. 19a), a statute that imposed record-keeping burdens only with respect to child performers would achieve that objective far less successfully, because it would be easier under such a regime for children to pass as adults and for adults to claim ignorance of a child's minority status.[5]

b. Petitioners also argue (Pet. 20-24) that the court of appeals misapplied the standard of intermediate scrutiny, on the grounds that Section 2257 does not advance the government's interest in deterring the production and distribution of child pornography. In particular, petitioners suggest (Pet. 20) that Section 2257 is incapable of deterring the use of children in pornography because it forbids the use, in criminal prosecutions, of the records that it requires to be created and maintained.

Petitioners' analysis is flawed, because the statute achieves its objective of deterring the use of children in pornography by means other than creating evidence that is admissible at trial. First, logic suggests

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[5] Petitioners also suggest (Pet. 17) that the court of appeals' determination that the statute is content-neutral conflicts with decisions of other courts of appeals that have found governmental attempts to regulate but not ban the access of minors to indecent telephone messages ("dial-a-porn") to be content-based. But those cases, which have generally upheld such regulations, see, *e.g.*, *Dial Information Servs. Corp.* v. *Thornburgh*, 938 F.2d 1535, 1540-1543 (2d Cir. 1991), cert. denied, 502 U.S. 1072 (1992), have involved efforts to regulate speech as such, not to deter conduct having an incidental effect on expression, as in this case. See also Pet. App. 16a.

—and Congress was informed—that a producer confronted with documentary evidence that a model is underage will refuse to employ that model in a sexually explicit visual depiction. See *Child Protection and Obscenity Enforcement Act of 1988: Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 100th Cong., 2d Sess. 450 (1988) (in a system in which producers were required to create and maintain records regarding performers' ages, "many of the marginal producers would probably say, well, let us just go ahead and deal with the 19-year old girl * * *, rather than dealing with the 17-year old girl"). Second, under Section 2257, child models who misguidedly desire to hold themselves out as adults will find it more difficult to do so, because they are now required to submit proof of age. Pet. App. 19a. Third, even if the primary producer (who creates the visual depiction) resolves to hire an underage performer, there can be little doubt that the record-keeping provisions eliminate the ability of secondary producers (who incorporate the depictions of others and have no direct contact with the performer) to claim that they made an "honest mistake" with regard to the age of a model depicted. *Ibid.* At the very least, therefore, "the record-keeping obligations imposed on primary producers remain elements of the statutory scheme that are critical to ensuring that secondary producers deny child pornographers access to their markets." *Id.* at 20a.[6]

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[6] Petitioners claim (Pet. 21) that deterrence of child pornography was not among Congress's purposes in passing Section 2257. On the contrary, however, achieving such deterrence was prominently mentioned as one of the goals of the statute. See, *e.g.*, 134 Cong. Rec. 25,913 (1988) (remarks of Sen. Heflin) (noting that by requiring verification of

Petitioners suggest (Pet. 21) that, to the extent that the statute's deterrent effect is said to be achieved by depriving persons charged with producing child pornography[7] of an "honest mistake" defense, that effect is nugatory because "ignorance of a performer's minority is not a defense to a charge of producing child pornography." See *United States* v. *X-Citement Video, Inc.*, 115 S. Ct. 464, 471 n.5 (1994). But petitioners concede (Pet. 21), as they must, that courts have permitted persons prosecuted for producing child pornography to assert as a defense that, after diligent investigation of the performer's age, they believed the model to be an adult. See *United States* v. *United States District Court*, 858 F.2d 534, 540 (9th Cir. 1988). In such cases, therefore, Section 2257's record-keeping and disclosure scheme furthers the government's deterrence interests by giving specific content to the diligence required of a child pornography defendant in ascertaining the age of a prospective model.

Petitioners also assert that Section 2257 is overinclusive because its recordkeeping and disclosure provisions apply to "mainstream producers and dis-

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ages, the record-keeping requirements will "thereby significantly deter the illegal use of minors in such pornography"). See also *Child Protection and Obscenity Enforcement Act and Pornography Victims Protection Act of 1987: Hearing before the Senate Comm. on the Judiciary*, 100th Cong., 2d Sess. 161 (1988) ("[t]he very fact that [child pornographers] must have a record that these young people are at least 18 years of age will be a tremendous deterrent to pornographers' seducing, recruiting young people into this illicit industry"); *id.* at 88 (testimony that the requirements "would cause those involved in the production of pornography to be cautious in avoiding the use of children").

[7] See 18 U.S.C. 2251(a).

tributors," who, petitioners assert, "do not deal in sexual images of minors." Pet. 23. But, as Congress determined and as the court of appeals emphasized, good intentions are insufficient to eradicate the problem of child pornography. As the court of appeals put the matter: "The entire point of the Act is to prevent subjective determinations of age by implementing a uniform procedure that applies to all performers." Pet. App. 21a. Petitioners' claim of overinclusiveness is also belied by the narrow range of highly explicit materials covered by Section 2257 —producers need create and maintain records relating only to those performers who engage in actual sexual intercourse, bestiality, masturbation, or sadistic or masochistic abuse. 18 U.S.C. 2257(h)(1). Thus, to a degree greater than under the broader definition at issue in *United States* v. *X-Citement Video, Inc.*, *supra*, "[w]hat is involved * * * is not the clinical, the artistic, nor even the risque, but hard-core pornography." 115 S. Ct. at 475 (Scalia, J., dissenting).

Finally, the method chosen by Congress to deter child pornography—requiring producers to note the names and ages of their performers, as well as to disclose where the required records may be found—imposes burdens on producers that are no greater than those arising from the immigration, tax, and child labor laws,[8] or than are necessary as a matter of prudent business practice to ensure proper re-

[8] See, *e.g.*, 8 U.S.C. 1324a(b); 8 C.F.R. 274a.2 (Immigration Reform and Control Act); 29 U.S.C. 657, 673; 29 C.F.R. 1904.2(a), 1904.5 (Occupational Safety and Health Act); 29 U.S.C. 211; 29 C.F.R. 516.2 (Fair Labor Standards Act); 26 C.F.R. 31.6001-2, 26 C.F.R. 31.6001-5 (federal social security and income tax regulatons).

leases and transfer of copyright. Indeed, such requirements have long been considered an acceptable means of governmental regulation, even where expression at the core of the First Amendment is affected. See, *e.g.*, *Buckley* v. *Valeo*, 424 U.S. 1, 60-74 (1976) (per curiam) (upholding reporting and disclosure requirements of the Federal Election Campaign Act). In this case, the burdens imposed by Section 2257 are no more than those necessary to serve the government's compelling interests in deterring the production and distribution of child pornography.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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